

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FELICITY M. TODD VEASEY and
SECOND AMENDMENT FOUNDATION,
INC.,

Plaintiffs,

v.

BRINDELL B. WILKINS, JR., in his official
capacity as Sheriff of Granville County, North
Carolina,
PAT McCRORY, in his official capacity as
Governor of North Carolina,
ROY COOPER, in his official capacity as
Attorney General of North Carolina, and
FRANK L. PERRY, in his official capacity as
Secretary of the North Carolina Department of
Public Safety,

Defendants.

No. 5:14-cv-00369-BO

KIRSTEN MESSMER,

Plaintiff,

v.

DONNIE HARRISON, in his Official Capacity
as Sheriff of Wake County, North Carolina,
PAT McCRORY, in his Official Capacity as
Governor of North Carolina,
ROY COOPER, in his Official Capacity as
Attorney General of North Carolina, and
FRANK L. PERRY, in his Official Capacity as
Secretary of the North Carolina Department of
Public Safety,

Defendants.

No. 5:15-cv-00097-BO

REPLY IN SUPPORT OF SHERIFF BRINDELL B. WILKINS, JR.'S
AND SHERIFF DONNIE HARRISON'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION

ARGUMENT

PLAINTIFFS CONCEDE THAT THESE CASES SHOULD BE DISMISSED ON THE MERITS AS MOOT, LEAVING ONLY THE ISSUE OF ATTORNEYS' FEES TO BE DECIDED.

Plaintiffs concede that these cases are moot. Their response to the Sheriffs' motion to dismiss concedes there are no "substantive issues" that "remain to be decided in this case as a result of the "mootness caused by a change in a statute." [No. 5:14-cv-00369, DE 66 at 1-2; No. 5:15-cv-00097, DE 45 at 1-2].

Before the Sheriffs' motion to dismiss for lack of subject matter jurisdiction was fully briefed, however, Plaintiffs filed motions for attorneys' fees. Their motions are premature. Motions for attorneys' fees should be filed "*after* the entry of judgment." Fed. R. Civ. P. 54(d)(2)(B)(i) (emphasis added). This is especially true here because a final judgment on the merits is a prerequisite to an award of attorney's fees under 42 U.S.C. § 1988. *Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001).

Regardless, it appears all parties agree that the cases should be dismissed on the merits as moot, leaving only the issue of attorneys' fees to be decided. The Sheriffs respectfully request that the Court proceed accordingly.

CONCLUSION

For the foregoing reasons, Defendants Brindell B. Wilkins, Jr. and Donnie Harrison respectfully request that the Court dismiss the above-captioned actions as moot, leaving only the issue of attorneys' fees to be decided.

Respectfully submitted the 21st day of October, 2015.

POYNER SPRUILL LLP

By: s/ Andrew H. Erteschik
Andrew H. Erteschik
N.C. State Bar No. 35269
aerteschik@poynerspruill.com
P.O. Box 1801
Raleigh, NC 27602-1801
Telephone: 919.783.2895
Facsimile: 919.783.1075

**COUNSEL FOR SHERIFF
BRINDELL B. WILKINS, JR. AND
SHERIFF DONNIE HARRISON**

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record as follows:

Camden R. Webb
Williams Mullen
301 Fayetteville St., Suite 1700
P. O. Box 1000
Raleigh, NC 27601
*Counsel for Plaintiff Kirsten Messmer
Local Rule 83.1 Counsel for
Plaintiffs Felicity M. Todd Veasey and
Second Amendment Foundation, Inc.*

Charles G. Whitehead
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Counsel for the State of North Carolina

Hal F. Askins
J. Joy Strickland
N.C. Dept. of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
*Counsel for Defendants Governor Pat
McCrory, Attorney General Roy
Cooper and Frank L. Perry*

David G. Sigale
Law Firm of David G. Sigale, P.C.
739 Roosevelt Road, Suite 304
Glen Ellyn, IL 60137
dsigale@sigalelaw.com
*Lead Counsel for Plaintiffs Felicity M.
Todd Veasey and Second Amendment
Foundation, Inc.*

This the 21st day of October, 2015.

s/ Andrew H. Erteschik
Andrew H. Erteschik